

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 ) GN Docket No. 93-252  
Implementation of Sections 3(n) )  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of Mobile Services )

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COMMENTS OF LCC, L.L.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

LCC, L.L.C. ("LCC") hereby submits its comments on the Second Further Notice of Proposed Rulemaking, FCC 94-191 (released July 20, 1994) (the "NPRM"), issued in the above-captioned proceeding.

LCC is a leading supplier of engineering services and specialized software and hardware products to commercial mobile radio service ("CMRS") providers. LCC respectfully submits that in order to maximize competition in the marketplace and bring the benefits of wireless communications to the greatest number of people, management agreements, resale agreements, joint marketing agreements and other similar arrangements should not be treated as attributable interests for purposes of applying: (i) the personal communications services ("PCS") spectrum aggregation cap or the cellular-PCS cross-ownership restrictions;<sup>1</sup> (ii) a general CMRS

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<sup>1</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700 (1993), recon., Memorandum Opinion and Order, FCC 94-144 (released June 13, 1994).

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spectrum cap;<sup>2</sup> or (iii) the Commission's designated entity provisions.<sup>3</sup> In particular, LCC requests the Commission to confirm that LCC's provision of specialized technical products and services to CMRS providers will not in any event give rise to attributable interests.

#### I. LCC'S INTEREST IN THE PROCEEDING

Since its establishment in 1983, LCC has played a significant role in the development of the wireless communications industry in the United States and abroad. LCC was the first company to specialize in the design, engineering and optimization of cellular radiotelephone systems, and in such capacity has designed cellular systems in 28 of the 30 largest U.S. metropolitan statistical areas and in numerous countries in Europe, Latin America and Asia. LCC currently offers an integrated range of engineering services and software and hardware products that enable LCC's customers to more efficiently design and operate their CMRS systems. These services and products are briefly summarized below.

Engineering Services. LCC's staff of in-house engineers works with CMRS operators to help such operators design, expand and optimize their wireless mobile communications networks.

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<sup>2</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Further Notice of Proposed Rule Making, FCC 94-100 (released May 20, 1994).

<sup>3</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, FCC 94-178 (released July 15, 1994) (*Broadband PCS Auction Rules Order*).

This aspect of LCC's business involves a variety of highly specialized technical services, including system planning, design and optimization; interference analysis; frequency planning and coordination; traffic analysis; system performance evaluation; and technology transition analysis.

Software Products. LCC has also developed an integrated range of proprietary software products that facilitate the design and operation of CMRS systems. These products include CellCAD™ and ANET™ (predictive coverage and design tools); CellSIGHT® (a real-time program that allows operators to collect and process data from a cellular switch); CellTRAC® (a real-time billing program); InfoSITE® (a fraud prevention package); CellMAX® (a program that processes field measurement data); CellHOST® (a handoff prediction tool); and CellCONNECT™ (a program that performs interconnect analysis). These software tools are utilized both in-house by LCC's engineers and by LCC's customers under software licensing arrangements.

Hardware Products. Finally, LCC sells a variety of test equipment products that are designed to meet a CMRS operator's need to verify actual system performance. These products include the CelluMATE® family of products (designed for field measurement, data collection and analysis); the RSAT® product line (designed for the measurement and analysis of important radio frequency ("RF") system parameters); and the TX-1500® (designed to test and validate RF coverage before the construction of new cell sites).

As mentioned above, LCC has numerous customers in the cellular

industry. Through its TSI, L.L.C. subsidiary, LCC also provides its services and products to operators of specialized mobile radio and enhanced specialized mobile radio systems. Given its long experience in the wireless industry and its unique range of integrated products and services, LCC expects to play an active role in the design and implementation of PCS systems in the United States. Specifically, LCC expects to render its engineering services, license its software and sell its hardware to one or more PCS licensees.

## II. DISCUSSION

A. Contractual Arrangements in General. In the NPRM, the Commission requests comment on whether management agreements, resale agreements, joint marketing agreements and similar arrangements should be treated as attributable interests for purposes of application of the PCS spectrum aggregation cap, the PCS-cellular cross-ownership restrictions, a general CMRS spectrum cap or the designated entity provisions. LCC believes that in order to best meet the needs of the marketplace as well as fulfill the statutory mandate to provide full PCS broadband opportunities to minorities, women, small businesses and rural telephone companies, the types of arrangements described in the NPRM should not be deemed attributable interests.

One of the Commission's principal aims in the broadband PCS process has been to promote vigorous competition in the CMRS industry in order to make reasonably priced wireless communications

services ever more accessible to the public. Treating the above-described arrangements as non-attributable interests will undoubtedly further this purpose for two reasons. First, creating a regulatory landscape that encourages PCS licensees to freely enter into contractual arrangements will enhance competition among the licensees themselves, ensuring provision of the highest quality service at the lowest cost to consumers. If attribution rules curtailed the choices available to licensees, certain expertise and technology would be available to only a limited number of PCS providers -- most probably those already established in the industry. This would impede new market entrants, harm competition and diminish the level of service available to the public. Second, applying attribution rules to the types of commercial arrangements described in the NPRM would effectively limit competition among those third parties offering products, services and expertise to PCS licensees. By impeding competition among such third parties, their products, services and expertise would likely be more costly, and technological innovation would be diminished. Licensees would in turn pass these costs on to consumers, who would likewise be deprived of the innovations that would otherwise be available.

These considerations are especially acute in the designated entity context. LCC applauds the Commission's efforts to enable women, minorities, small businesses and rural telephone companies to participate in the broadband PCS licensing process in a meaningful manner. We believe, however, that applying attribution principles to contractual arrangements of the sort described in the

NPRM would only exacerbate the problems which the designated entity provisions seek to remedy.

As the Commission has recognized, minorities, women and small businesses have faced enormous hurdles in becoming major participants in the telecommunications industry.<sup>4</sup> In order for designated entities to correct this historic imbalance and compete effectively against established CMRS operators, designated entities will need the broadest possible access to the expertise and resources of third parties. Moreover, such access will enable designated entities to achieve equal footing (in terms of levels and quality of service, marketing prowess, pricing, etc.) with established telecommunications companies and other non-designated entities in the fastest possible time period. The overall effect will be to strengthen the designated entities' competitive posture, resulting in increased choice and lower prices in the marketplace. It should also be stressed that the increased competitiveness resulting from allowing designated entities greater, rather than less, freedom in their contractual arrangements should make it easier for designated entities to raise the significant amounts of capital that will be necessary to implement and operate PCS systems.

We believe that subjecting the contracts of designated entities to the attribution rules would have the exact opposite of the desired effect: the decreased competitiveness and restricted

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<sup>4</sup> See *Broadband PCS Auction Rules Order*, at paras. 93-112.

access to capital resulting from such a rule would only serve to perpetuate the disadvantages experienced for years by women, minorities and small businesses.

Moreover, the possible problems cited in the NPRM -- sham corporations and anticompetitive integration between licensees and third party contractors -- are unlikely, and do not outweigh the benefits of affording designated entities a competitive opportunity in broadband PCS. As an initial matter, it is difficult to conceive of a "sham" corporation that satisfies the stringent *de jure* and *de facto* control standards of the Commission's rules. Because the current rules already require that any designated entity participate in the economic benefits of the licensee's operations, a mere corporate shell or the like would not withstand the Commission's scrutiny. Similarly, excessive integration between the licensee and a management company or another contractor would be deterred by the heavy penalties associated with violating the control standard (*i.e.*, loss of designated entity preferences). In any event, both these risks are purely hypothetical, whereas the negative effects on designated entities of forbidding such arrangements are demonstrably more certain.

B. LCC's Technical Products and Services. Even if the Commission disagrees with the arguments presented in Section II-A above, LCC respectfully requests that the Commission confirm that provision of the types of technical products and services supplied by LCC would not in any event be deemed to be attributable

interests for purposes of applying the PCS spectrum aggregation cap, the cellular-PCS cross-ownership attribution standards, a general CMRS spectrum cap or the Commission's designated entity provisions.

As described in Section I above, the services, software and hardware offered by LCC are purely technical in nature, and do not involve a CMRS operator's relinquishment of control over, or responsibility for, its licensed facilities. This is demonstrated by examining LCC's products and services against the criteria set forth in *Intermountain*<sup>5</sup>:

- \* In the course of providing its services and products, LCC does not have unfettered use of a CMRS operator's facilities.
- \* LCC's customers do not relinquish control over daily operations to LCC.
- \* Although LCC works with customers in connection with the preparation and filing of applications with the Commission, all policy-level decisions are determined and carried out by the customer.
- \* Although LCC's engineers work with, and occasionally direct the activities of, the employees of the company's customers, the customer remains in charge of all decisions regarding the employment, dismissal and overall supervision of personnel.

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<sup>5</sup> Intermountain Microwave, 24 RR 983 (1963).



- \* LCC does not relieve customers from their obligation to pay all their financial obligations.
- \* LCC does not receive profits derived from the operation of its customers' licensed facilities.

It should also be noted that the typical contract between LCC and a customer contains strict nondisclosure provisions that prohibit LCC from disclosing any customer proprietary information to any third party. In this way, it is impossible for any one LCC customer to gain access to the proprietary information of any other LCC customer. Moreover, even though LCC has access to certain proprietary information of its customers, such information is generally of a technical nature, and does not ordinarily involve customer lists, business plans, marketing strategies, etc.

### III. CONCLUSION

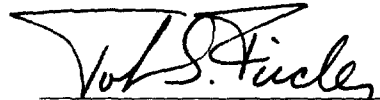
Based on the foregoing, LCC respectfully submits that management agreements, resale agreements, joint marketing agreements and other similar arrangements should not be treated as attributable interests for purposes of applying the PCS spectrum aggregation cap, the cellular-PCS cross-ownership attribution standards, a general CMRS spectrum cap or the Commission's designated entity provisions. In addition, LCC requests that the Commission confirm that LCC's provision of specialized technical

products and services to CMRS providers will not give rise to attributable interests.

Respectfully submitted,

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